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REMARKS

In response to the Office Action dated April 10, 2007, Applicants respectfully request reconsideration based on the above amendments and following remarks. Applicants respectfully submit that the claims as presented are in condition for allowance.

Claim 43 has been canceled without prejudice or disclaimer.

Claims 36-50 were rejected under 35 U.S.C. § 101 as being allegedly directed to non-statutory subject matter. This rejection is traversed for the following reasons.

The thrust of the Examiner's position is that certain steps in the claimed method are performed by humans, and that since human performance is unpredictable, the claimed method cannot provide a useful, concrete (i.e., predictable) and tangible result as required by case law and summarized in MPEP § 2106. Applicants are unaware of any authority supporting the Examiner's position that a method including human implemented steps is per se unpredictable and thus non-statutory. To the contrary, a leading case on statutory subject matter involved phone calls initiated by humans. The claim found statutory in *AT&T Corp. v. Excel Communications, Inc.* 50 USPQ2d 1447 (Fed. Cir. 1999) involved a claim reciting a method "for use in a telecommunications system in which interexchange calls initiated by each subscriber are automatically routed . . ." (emphasis added). Clearly, the presence of a human-performed step does not transform a claim to non-statutory subject matter.

The correct analysis is whether the process, when implemented as recited in the claim, provides either (i) a physical transformation or (ii) a useful, concrete (i.e., repeatable) and tangible result. In the present case, both these questions are answered in the affirmative. The claimed method causes a physical transformation of the telecommunications equipment by transferring a software program from a network server to the telecommunications equipment. The installation of the new software transforms the telecommunications equipment to a different state. It has been long held that computer software installed on a general-purpose computer transforms the general-purpose computer to a new machine. *State Street Bank & Trust Company v. Signature Financial Group, Inc.*, 149 F.3d 1368 (Fed. Cir. 1998). Thus, the method of claim 1 provides a physical transformation of the telecommunications equipment and thus is statutory subject matter.

Further, the method of claim 1 provides a useful, concrete and tangible result. The process is useful as it updates the telecommunications equipment with software. The process is concrete as it is repeatable when implemented as recited. The Examiner's position is that human activity is unpredictable and thus the claimed process cannot yield a concrete result. Applicants submit that all claimed processes are hypothetically error-prone through a myriad of factors (human error, mechanical failure, software bugs, communications failures, etc.). This does not render a claimed process unpredictable. The test is whether the process as claimed produces a concrete result. In the present case, if the steps of claim 1 are followed, then the result is repeatable and concrete. Lastly, the result is tangible in the form of providing technicians with the updated software. Thus, the claimed process is statutory. For at least the above reasons, the rejection of claims 36-50 under 35 U.S.C. § 101 should be withdrawn.

Claims 36-50 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Lamming et al. "Satchel: Providing Access to Any Document, Any Time, Anywhere", 9-2000 ("Lamming") in view of www.Rogers.com, "Portage™ Wireless Connectivity, Quick Start Guide, 10-2000" ("Rogers"). This rejection is traversed for the following reasons.

Claim 42 recites "generating an electronic email message to a plurality of mobile computers associated with the technicians, wherein the generating is responsive to receiving the updated version of the software program." Neither Lamming nor Rogers teaches or suggests this element. In analyzing this element, the Examiner states that any computer user can generate emails. While this is true, there is no teaching in Lamming or Rogers of generating an electronic email message responsive to receiving the updated version of the software program. Embodiments of the invention allow technicians to be notified when updated software is available such that telecommunications equipment can be updated uniformly. This feature is simply not present in Lamming or Rogers, and thus claim 42 is patentable over Lamming in view of Rogers.

Further, claim 42 recites "providing the plurality of technicians with access to the updated version of the software and the computerized guide relating to a first vendor's equipment; and providing the plurality of technicians with access to second software and a second computerized guide relating to a second vendor's equipment." In analyzing this element, the Examiner states "The Satchel's device, such as lap-top or mobile device, has

“user interface”; with this interface, anyone using such device can access to the software/documents, locally or remotely.” While it is true that the user’s pc and mobile device will have a user interface, this fact alone does not correspond to the claim language. These elements allow technicians to install the software for multiple types of equipment thereby facilitating distribution of software upgrades. Lamming does not disclose providing software and computerized guide relating to multiple vendors’ equipment. Rogers is directed to a single vendor’s equipment and thus also fails to teach these features of claim 42. Accordingly, claim 42 is patentable over Lamming in view of Rogers.

Further, claim 42 includes the features of canceled claim 43, and recites “wherein receiving an updated version of a software program on the network server further comprises loading the updated version of the software program for each of a plurality of equipment in use in a telecommunications system.” In analyzing this element, the Examiner cites to Figure 1 of Lamming. Lamming only teaches installing software on a single mobile device, a Nokia 9000. There is no teaching in Lamming or Rogers of loading an updated version of the software program for each of a plurality of equipment in use in a telecommunications system.

For at least the above reasons, claim 42 is patentable over Lamming in view of Rogers. Claims 36-41 and 44-50 depend from claim 42 and are patentable over Lamming in view of Rogers for at least the reasons advanced with respect to claim 42.

It is respectfully submitted that the application is in condition for allowance. Accordingly, reconsideration and allowance of the claims are respectfully requested. The Examiner is cordially requested to telephone, if the Examiner believes that it would be advantageous to the disposition of this case.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment, which may be required for this amendment, to Deposit Account No. 06-1130.

In the event that an extension of time is required, or may be required in addition to that requested in any petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 06-1130.

Respectfully submitted,

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